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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARICELA ALVAREZ,

Plaintiff,

v.

ESTERLINE TECHNOLOGIES
CORPORATION, a California
Corporation; and DOES 1-50,
inclusive,

Defendants.

Case No. 8:18-cv-00965-AG-DFM

**HONORABLE ANDREW J.
GUILFORD STANDING
PROTECTIVE ORDER**

[Discovery Document: Referred to
Magistrate Judge Douglas F.
McCormick]

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1 **1. PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or
3 private information requiring special protection from public disclosure and from
4 use for any purpose other than this litigation. Thus, the Court enters this Protective
5 Order. This Order does not confer blanket protections on all disclosures or
6 responses to discovery, and the protection it gives from public disclosure and use
7 extends only to the specific material entitled to confidential treatment under the
8 applicable legal principles. This Order does not automatically authorize the filing
9 under seal of material designated under this Order. Instead, the parties must comply
10 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not
11 govern the use at trial of material designated under this Order.

12 **2. DESIGNATING PROTECTED MATERIAL**

13 **2.1 Over-Designation Prohibited.** Any party or non-party who designates
14 information or items for protection under this Order as “CONFIDENTIAL,”
15 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
16 CONFIDENTIAL – SOURCE CODE” (a “designator”) must only designate
17 specific material that qualifies under the appropriate standards. To the extent
18 practicable, only those parts of documents, items, or oral or written
19 communications that require protection shall be designated. Designations with a
20 higher confidentiality level when a lower level would suffice are prohibited. Mass,
21 indiscriminate, or routinized designations are prohibited. Unjustified designations
22 expose the designator to sanctions, including the Court’s striking all confidentiality
23 designations made by that designator. Designation under this Order is allowed only
24 if the designation is necessary to protect material that, if disclosed to persons not
25 authorized to view it, would cause competitive or other recognized harm. Material
26 may not be designated if it has been made public, or if designation is otherwise
27 unnecessary to protect a secrecy interest. If a designator learns that information or
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1 items that it designated for protection do not qualify for protection at all or do not
2 qualify for the level of protection initially asserted, that designator must promptly
3 notify all parties that it is withdrawing the mistaken designation.

4 **2.2 Manner and Timing of Designations.** Designation under this Order
5 requires the designator to affix the applicable legend (“CONFIDENTIAL,”
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
7 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
8 material. For testimony given in deposition or other proceeding, the designator shall
9 specify all protected testimony and the level of protection being asserted. It may
10 make that designation during the deposition or proceeding, or may invoke, on the
11 record or by written notice to all parties on or before the next business day, a right
12 to have up to 21 days from the deposition or proceeding to make its designation.

13 **2.2.1** A party or non-party that makes original documents or materials
14 available for inspection need not designate them for protection until after the
15 inspecting party has identified which material it would like copied and produced.
16 During the inspection and before the designation, all material shall be treated as
17 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting
18 party has identified the documents it wants copied and produced, the producing
19 party must designate the documents, or portions thereof, that qualify for protection
20 under this Order.

21 **2.2.2** Parties shall give advance notice if they expect a deposition or
22 other proceeding to include designated material so that the other parties can ensure
23 that only authorized individuals are present at those proceedings when such
24 material is disclosed or used. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation. Transcripts containing designated
26 material shall have a legend on the title page noting the presence of designated
27 material, and the title page shall be followed by a list of all pages (including line
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1 numbers as appropriate) that have been designated, and the level of protection being
2 asserted. The designator shall inform the court reporter of these requirements. Any
3 transcript that is prepared before the expiration of the 21-day period for designation
4 shall be treated during that period as if it had been designated HIGHLY
5 CONFIDENTIAL – ATTORNEY EYES ONLY unless otherwise agreed. After the
6 expiration of the 21-day period, the transcript shall be treated only as actually
7 designated.

8 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
9 designate does not, standing alone, waive protection under this Order. Upon timely
10 assertion or correction of a designation, all recipients must make reasonable efforts
11 to ensure that the material is treated according to this Order.

12 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

13 All challenges to confidentiality designations shall proceed under L.R. 37-1
14 through L.R. 37-4.

15 **4. ACCESS TO DESIGNATED MATERIAL**

16 **4.1 Basic Principles.** A receiving party may use designated material only
17 for this litigation. Designated material may be disclosed only to the categories of
18 persons and under the conditions described in this Order.

19 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
20 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
21 designator, a receiving party may disclose any material designated
22 CONFIDENTIAL only to:

23 **4.2.1** The receiving party's outside counsel of record in this action and
24 employees of outside counsel of record to whom disclosure is reasonably necessary;

25 **4.2.2** The officers, directors, and employees of the receiving party to
26 whom disclosure is reasonably necessary, and who have signed the Agreement to
27 Be Bound (Exhibit A);

1 **4.2.3** Experts retained by the receiving party's outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit A);

4 **4.2.4** The Court and its personnel;

5 **4.2.5** Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably necessary,
7 and who have signed the Agreement to Be Bound (Exhibit A);

8 **4.2.6** During their depositions, witnesses in the action to whom
9 disclosure is reasonably necessary and who have signed the Agreement to Be
10 Bound (Exhibit A); and

11 **4.2.7** The author or recipient of a document containing the material, or
12 a custodian or other person who otherwise possessed or knew the information.

13 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**
14 **ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material Without**
15 **Further Approval.** Unless permitted in writing by the designator, a receiving party
16 may disclose material designated HIGHLY CONFIDENTIAL – ATTORNEY
17 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE without further
18 approval only to:

19 **4.3.1** The receiving party's outside counsel of record in this action and
20 employees of outside counsel of record to whom it is reasonably necessary to
21 disclose the information;

22 **4.3.2** The Court and its personnel;

23 **4.3.3** Outside court reporters and their staff, professional jury or trial
24 consultants, and professional vendors to whom disclosure is reasonably necessary,
25 and who have signed the Agreement to Be Bound (Exhibit A); and

26 **4.3.4** The author or recipient of a document containing the material, or
27 a custodian or other person who otherwise possessed or knew the information.
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1 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**
2 **CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**
3 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
4 **Experts.** Unless agreed to in writing by the designator:

5 **4.4.1** A party seeking to disclose to in-house counsel any material
6 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must first
7 make a written request to the designator providing the full name of the in-house
8 counsel, the city and state of such counsel’s residence, and such counsel’s current
9 and reasonably foreseeable future primary job duties and responsibilities in
10 sufficient detail to determine present or potential involvement in any competitive
11 decision-making. In-house counsel are not authorized to receive material designated
12 HIGHLY CONFIDENTIAL – SOURCE CODE.

13 **4.4.2** A party seeking to disclose to an expert retained by outside
14 counsel of record any information or item that has been designated HIGHLY
15 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
16 SOURCE CODE must first make a written request to the designator that (1)
17 identifies the general categories of HIGHLY CONFIDENTIAL – ATTORNEY
18 EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE CODE information that
19 the receiving party seeks permission to disclose to the expert, (2) sets forth the full
20 name of the expert and the city and state of his or her primary residence, (3)
21 attaches a copy of the expert’s current resume, (4) identifies the expert’s current
22 employer(s), (5) identifies each person or entity from whom the expert has received
23 compensation or funding for work in his or her areas of expertise (including in
24 connection with litigation) in the past five years, and (6) identifies (by name and
25 number of the case, filing date, and location of court) any litigation where the
26 expert has offered expert testimony, including by declaration, report, or testimony
27 at deposition or trial, in the past five years. If the expert believes any of this
28 information at (4) - (6) is subject to a confidentiality obligation to a third party, then

1 the expert should provide whatever information the expert believes can be disclosed
2 without violating any confidentiality agreements, and the party seeking to disclose
3 the information to the expert shall be available to meet and confer with the
4 designator regarding any such confidentiality obligations.

5 **4.4.3** A party that makes a request and provides the information
6 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
7 identified in-house counsel or expert unless, within seven days of delivering the
8 request, the party receives a written objection from the designator providing
9 detailed grounds for the objection.

10 **4.4.4** All challenges to objections from the designator shall proceed
11 under L.R. 37-1 through L.R. 37-4.

12 **5. SOURCE CODE**

13 **5.1 Designation of Source Code.** If production of source code is
14 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
15 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

16 **5.2 Location and Supervision of Inspection.** Any HIGHLY
17 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made
18 available for inspection, in a format allowing it to be reasonably reviewed and
19 searched, during normal business hours or at other mutually agreeable times, at an
20 office of the designating party's counsel or another mutually agreeable location.
21 The source code shall be made available for inspection on a secured computer in a
22 secured room, and the inspecting party shall not copy, remove, or otherwise transfer
23 any portion of the source code onto any recordable media or recordable device. The
24 designator may visually monitor the activities of the inspecting party's
25 representatives during any source code review, but only to ensure that there is no
26 unauthorized recording, copying, or transmission of the source code.

1 **5.3 Paper Copies of Source Code Excerpts.** The inspecting party may
2 request paper copies of limited portions of source code that are reasonably
3 necessary for the preparation of court filings, pleadings, expert reports, other
4 papers, or for deposition or trial. The designator shall provide all such source code
5 in paper form, including Bates numbers and the label “HIGHLY CONFIDENTIAL
6 – SOURCE CODE.”

7 **5.4 Access Record.** The inspecting party shall maintain a record of any
8 individual who has inspected any portion of the source code in electronic or paper
9 form, and shall maintain all paper copies of any printed portions of the source code
10 in a secured, locked area. The inspecting party shall not convert any of the
11 information contained in the paper copies into any electronic format other than for
12 the preparation of a pleading, exhibit, expert report, discovery document, deposition
13 transcript, or other Court document. Any paper copies used during a deposition
14 shall be retrieved at the end of each day and must not be left with a court reporter or
15 any other unauthorized individual.

16 **6. PROSECUTION BAR**

17 Absent written consent from the designator, any individual who receives
18 access to HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
19 CONFIDENTIAL – SOURCE CODE information shall not be involved in the
20 prosecution of patents or patent applications concerning the field of the invention of
21 the patents-in-suit for the receiving party or its acquirer, successor, predecessor, or
22 other affiliate during the pendency of this action and for one year after its
23 conclusion, including any appeals. “Prosecution” means drafting, amending,
24 advising on the content of, or otherwise affecting the scope or content of patent
25 claims or specifications. These prohibitions shall not preclude counsel from
26 participating in reexamination or inter partes review proceedings to challenge or
27 defend the validity of any patent, but counsel may not participate in the drafting of
28 amended claims in any such proceedings.

1 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 **7.1 Subpoenas and Court Orders.** This Order in no way excuses non-
4 compliance with a lawful subpoena or court order. The purpose of the duties
5 described in this section is to alert the interested parties to the existence of this
6 Order and to give the designator an opportunity to protect its confidentiality
7 interests in the court where the subpoena or order issued.

8 **7.2 Notification Requirement.** If a party is served with a subpoena or a
9 court order issued in other litigation that compels disclosure of any information or
10 items designated in this action as CONFIDENTIAL, HIGHLY CONFIDENTIAL –
11 ATTORNEY EYES ONLY, or HIGHLY CONFIDENTIAL – SOURCE CODE,
12 that party must:

13 **7.2.1** Promptly notify the designator in writing. Such notification shall
14 include a copy of the subpoena or court order;

15 **7.2.2** Promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Order. Such notification shall include a copy of
18 this Order; and

19 **7.2.3** Cooperate with all reasonable procedures sought by the
20 designator whose material may be affected.

21 **7.3 Wait For Resolution of Protective Order.** If the designator timely
22 seeks a protective order, the party served with the subpoena or court order shall not
23 produce any information designated in this action as CONFIDENTIAL, HIGHLY
24 CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL –
25 SOURCE CODE before a determination by the court where the subpoena or order
26 issued, unless the party has obtained the designator’s permission. The designator
27 shall bear the burden and expense of seeking protection of its confidential material
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1 in that court.

2 **8. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

3 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
4 designated material to any person or in any circumstance not authorized under this
5 Order, it must immediately (1) notify in writing the designator of the unauthorized
6 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
7 designated material, (3) inform the person or persons to whom unauthorized
8 disclosures were made of all the terms of this Order, and (4) use reasonable efforts
9 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

10 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
11 **PROTECTED MATERIAL**

12 When a producing party gives notice that certain inadvertently produced
13 material is subject to a claim of privilege or other protection, the obligations of the
14 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
15 This provision is not intended to modify whatever procedure may be established in
16 an e-discovery order that provides for production without prior privilege review
17 pursuant to Federal Rule of Evidence 502(d) and (e).

18 **10. FILING UNDER SEAL**

19 Without written permission from the designator or a Court order, a party may
20 not file in the public record in this action any designated material. A party seeking
21 to file under seal any designated material must comply with L.R. 79-5.1. Filings
22 may be made under seal only pursuant to a court order authorizing the sealing of the
23 specific material at issue. The fact that a document has been designated under this
24 Order is insufficient to justify filing under seal. Instead, parties must explain the
25 basis for confidentiality of each document sought to be filed under seal. Because a
26 party other than the designator will often be seeking to file designated material,
27 cooperation between the parties in preparing, and in reducing the number and extent
28 of, requests for under seal filing is essential. If a receiving party's request to file

1 designated material under seal pursuant to L.R. 79-5.1 is denied by the Court, then
2 the receiving party may file the material in the public record unless (1) the
3 designator seeks reconsideration within four days of the denial, or (2) as otherwise
4 instructed by the Court.

5 **11. FINAL DISPOSITION**

6 Within 60 days after the final disposition of this action, each party shall
7 return all designated material to the designator or destroy such material, including
8 all copies, abstracts, compilations, summaries, and any other format reproducing or
9 capturing any designated material. The receiving party must submit a written
10 certification to the designator by the 60-day deadline that (1) identifies (by
11 category, where appropriate) all the designated material that was returned or
12 destroyed, and (2) affirms that the receiving party has not retained any copies,
13 abstracts, compilations, summaries, or any other format reproducing or capturing
14 any of the designated material. This provision shall not prevent counsel from
15 retaining an archival copy of all pleadings, motion papers, trial, deposition, and
16 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
17 expert reports, attorney work product, and consultant and expert work product, even
18 if such materials contain designated material. Any such archival copies remain
19 subject to this Order.

20
21 IT IS SO ORDERED.

22
23 DATED: November 16, 2018



24
25 United States District Judge

26 Andrew J Guilford

1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND**

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Protective Order that was issued
7 by the United States District Court for the Central District of California on _____
8 [date] in the case of _____ [insert formal name of the case and the number
9 and initials assigned to it by the court]. I agree to comply with and to be bound by
10 all the terms of this Protective Order, and I understand and acknowledge that failure
11 to so comply could expose me to sanctions and punishment for contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Protective Order to any person or entity except in strict
14 compliance with this Order.

15 I further agree to submit to the jurisdiction of the United States District Court
16 for the Central District of California for the purpose of enforcing this Order, even if
17 such enforcement proceedings occur after termination of this action.

18
19 I hereby appoint _____ [print or type full name] of
20 _____ [print or type full address and
21 telephone number] as my California agent for service of process in connection with
22 this action or any proceedings related to enforcement of this Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 [printed name]

27 Signature: _____